INSURANCE PROTECTION FOR PRIVATE CREDITORS UNDER THE INSOLVENCY AND BANKRUPTCY CODE: INTERPLAY BETWEEN BANKING AND INSURANCE LAWS

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ABSTRACT

The aim of the bankruptcy and Bankruptcy Code, 2016 (IBC) was to provide a comprehensive and time-bound framework for both creditor protection and bankruptcy resolution. The IBC does not specifically address risk reduction strategies accessible to creditors prior to insolvency, despite its primary focus on the restructuring of distressed debt and the maximum of value for creditors. In this sense, insurance products, particularly credit insurance, have a great deal of potential to safeguard the interests of private creditors, such as banks, NBFCs, and other financial institutions. The purpose of this paper is to investigate the potential of insurance products to provide auxiliary risk management for private creditors. The goal of the study is to clarify how the bankruptcy regime and insurance products relate to one another from a legal and regulatory standpoint, with a focus on RBI and IRDAI. The research also aims at exploring how credit insurance products and risk management mechanisms correlate with the creditor-led insolvency resolution framework proposed by IBC. In addition, the research aims at evaluating how insurance products could help mitigate risks during the insolvency process, especially when recovery of financial resources through IBC is uncertain and time-consuming.

This study aims to clarify the opportunities and difficulties associated with integrating insurance mechanisms within the framework of insolvency. It also looks for regulatory gaps, such as the IBC's lack of express acknowledgment of creditor insurance and private lenders' ignorance of risk mitigation techniques. The primary argument is that the insolvency framework in India requires better coordination between insurance legislation and banking supervision.

Keywords: Banking Regulation, Credit Insurance**,** Insolvency and Bankruptcy Code (IBC), Insurance Law, Insolvency Resolution, Private Creditors, Risk Mitigation.

1. Introduction

The development of the Indian insolvency regime under the Insolvency and Bankruptcy Code, 2016 (IBC), represents a significant shift in the Indian insolvency landscape, moving from the debtor-in-possession model to the creditor-in-control model. The IBC attempts to provide an environment that allows for quick resolution processes and the realization of maximum stakeholder value. However, while the IBC has strengthened the position of institutional creditors, the protection of the interests of private creditors remains an evolving complex concept. Against this backdrop, the importance of insurance as an instrument of financial risk mitigation assumes considerable significance. The present study attempts to present an evolving picture of the interface between insolvency law, banking law, and insurance law in the context of the protection of the interests of private creditors. It commences with an examination of the existing legal framework in the context of insolvency and the protection of creditors' interests in India, highlighting the importance of the interests of the various classes of creditors as per the IBC and the regulatory environment that has accompanied it. Subsequently, the study attempts to examine the concept of credit insurance as an instrument of financial risk mitigation, analyzing the extent to which it may provide financial security to the creditors in the face of default risk in an uncertain credit environment.

The Insolvency and Bankruptcy Code, 2016, may be perceived as an important milestone in the development of the insolvency landscape in India, as it consolidates existing laws into a single, time-bound mechanism for the resolution of corporate insolvency. The existing insolvency landscape in India, prior to the introduction of the IBC, had witnessed significant time lags, low recoveries, and differing jurisdictional approaches, thereby affecting the overall financial stability in the country. The IBC, in its attempt to overcome these challenges, strives to maximize asset values, foster entrepreneurship, and maintain the interests of all stakeholders in the insolvency resolution process, with particular emphasis on the interests of creditors. One of the primary objectives of the IBC is to provide greater strength to the interests of creditors through an orderly insolvency resolution mechanism. Despite the improvements in the Indian financial system in terms of the ability to resolve corporate insolvency in a stipulated time frame, creditors in the private sector, including banks and NBFCs, face higher credit risk in the form of borrower default or insolvency. The rise in the incidence of non-performing assets in the Indian financial system indicates the underlying risk in the financial system in terms of credit risk, even as the IBC has put in place the necessary machinery to recover the debt through

the mechanism of corporate insolvency or liquidation, as the risk to the financial system in the form of default by borrowers still remains in part. Within this context, the insurance protection for private sector creditors assumes critical importance as an unexplored dimension in ensuring creditor protection. The role of credit insurance as an effective means of mitigating credit risk through the sharing or transfer of borrower default risk assumes critical importance in the context of providing financial protection to creditors. Credit insurance is an important financial instrument that operates at the interface of banking and insurance law. This phenomenon is an important aspect of an evolving financial system in which the domains of financial law and regulation are converging in important ways. The interface between banking law in relation to the regulation of lending practices and insurance law in relation to the regulation of risk coverage is an important aspect of an evolving financial system in which the domains of financial law and regulation are converging in important ways.

This study intends to investigate whether insurance-based solutions could potentially improve the efficacy of India's Insolvency and Bankruptcy Code (IBC) by offering a framework of risk protection against insolvency-related risks in order to address the research problem of insufficient risk protection for private creditors under the country's insolvency system. Under these conditions, the study makes an effort to situate the conversation within the broader legal and financial context, highlighting the necessity of including risk protection measures for creditors. In light of this, the study looks at the possibilities of insurance-based solutions to address the insolvency issue in India specifically in an effort to add to the conversation on how the financial system may be stabilized. Additionally, the study looks at the connections between insurance law and banking regulation, emphasizing the places where these two legal disciplines overlap in the handling of credit risk in the financial system. In this context, the study attempts to identify challenges, gaps, and issues with regard to credit risk management, including issues related to credit insurance, regulatory harmonization, and issues related to enforcement and settlement of claims under insolvency scenarios. To provide a wider context, this study attempts to provide insights related to emerging global best practices, including how other global economies have incorporated insurance solutions within their insolvency framework to enhance risk protection for creditors. Thus, this study concludes with normative recommendations aimed at enhancing the synergy between insolvency, banking, and insurance laws to provide a more inclusive framework for private creditors within India’s insolvency system.

2. Legal Framework of Insolvency and Creditor Protection in India

The introduction of the Insolvency and Bankruptcy Code, 2016, therefore, reflects a paradigm shift in the approach to insolvency resolution in India with the consolidation of the existing fragmented laws into a unified code that is creditor-focused in its approach. The existing insolvency resolution process, as reflected in the Sick Industrial Companies Act, 1985, and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, was subject to certain delays, which undermined the confidence of the creditors in the process. The IBC, therefore, reflects a complete revamp of the existing insolvency resolution process with the introduction of a time-bound institutionalized insolvency resolution process that maximizes the value of the assets while treating all stakeholders fairly. The institutionalized insolvency resolution process, therefore, reflects a paradigm shift from the "debtor-in-possession" approach to the "creditor-in-control" approach, thereby reflecting the increased role of the creditor, particularly the financial creditor, in the insolvency process.

The institutional structure, therefore, reflects the role of the National Company Law Tribunal (NCLT) as the adjudicating authority in the case of corporate insolvency, while the role of the Insolvency and Bankruptcy Board of India (IBBI) is reflected as the regulator in the insolvency process with regard to insolvency professionals, information utilities, etc. The insolvency professionals, therefore, reflect the institutional structure in the insolvency process with regard to the Corporate Insolvency Resolution Process, wherein the insolvency professionals take over the management of the affairs of the debtor upon the initiation of the insolvency process. The moratorium, therefore, as reflected in the provisions of Section 14 of the Insolvency and Bankruptcy Code, 2016, reflects the protection of the assets of the debtor from the initiation of the insolvency process, thereby reflecting the maximization of the asset value in the insolvency process.

One of the fundamental aspects of creditor protection under the Insolvency and Bankruptcy Code, 2016, is the central role of financial creditors, whose importance is highlighted by their powers and duties. Financial creditors, as defined under Sections 5(7) and 5(8) of the Code, comprise banks, financial institutions, etc., which provide credit against the time value of money.[1] This is further buttressed by Section 7, which enables them to trigger the corporate

[1] Insolvency and Bankruptcy Code, No. 31 of 2016, & 5(7), 5(8) (India).

insolvency resolution process (CIRP) upon a default, thus enabling them to function as principal gatekeepers of insolvency proceedings.[2]

This privileged position is based upon the rationale that financial creditors, owing to their expertise in creditworthiness evaluation and financial restructuring, are better placed to assess the viability of the corporate debtor and take economically viable decisions regarding the revival or liquidation of such a debtor enterprise. The legislative intent behind the IBC Code is that financial creditors are placed at the helm of affairs in the decision-making process by virtue of their dominance in the Committee of Creditors (CoC), wherein voting shares are allocated in accordance with the financial debt owed by the debtors to such creditors. This model represents a clear shift from a debtor-in-possession model to a creditor-in-control model to ensure greater efficiency in decision-making and to maximize asset values and expedite resolution timelines. The constitutional validity of this classification between financial and operational creditors has been authoritatively settled by the Supreme Court in the case of *Swiss Ribbons Pvt. Ltd. v. Union of India*, wherein it has been held that financial creditors are not only better placed to assess the feasibility and viability of a resolution plan but also have a greater stake in sustaining such a debtor enterprise in the long run.[3] The rational nexus between such a classification and its nexus to the objectives of the Code have also been highlighted by the Court to hold that such a classification does not offend the guarantee of equality under Article 14 of the Constitution.

The Committee of Creditors (CoC), as mandated under the Insolvency and Bankruptcy Code, 2016 (IBC), is constituted under Section 21 of the IBC, which forms the institutional core of India's insolvency restructuring regime by placing control of the restructuring process in the hands of financial creditors. The creditor-driven approach of the IBC finds expression in the CoC, which represents a paradigm shift from the traditional debtor-in-possession approach towards a more market-driven approach. The Committee of Creditors (CoC) holds considerable power and authority as granted by the Insolvency and Bankruptcy Code (IBC). To be more specific, it has been granted powers by Section 30(4) of IBC to approve or reject a resolution plan, by Sections 22 and 27 of IBC to appoint or retire a resolution professional, and by Section 33 of IBC to decide whether or not to revive or liquidate the corporate debtor. The voting power of CoC members is proportional to the financial debt owed by each creditor, which is rational.

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[2] Id. & 7.
[3] *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 S.C.C. 17 (India).

The requirement of a 66% voting threshold under the IBC for key decisions strikes a balance between achieving a consensus and avoiding strategic deadlock. The jurisprudential basis for the authority of the CoC has been substantially strengthened in the recent decision of the Supreme Court in Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, where the Court has placed significant emphasis on the primacy of the "commercial wisdom" of the CoC in assessing and approving the resolution plans. The Court held that the adjudicating authority, i.e., the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT), must not intrude upon the substantive merits of the business decisions taken by the CoC unless in exceptional cases such as non-compliance with the requirements under Section 30(2) or any procedural infirmities.[4] The basis for this judicial deference is the recognition that financial creditors are best placed to assess the viability and feasibility of the resolution plans due to their expertise and interest in the outcome.

As such, the doctrine of "commercial wisdom" has emerged as an essential feature of the IBC Code, thereby facilitating efficiency in the resolution process and finality in the enforcement of creditor rights. The different recovery mechanisms provided in the IBC framework essentially work on the basis of the Corporate Insolvency Resolution Process (CIRP), which must be completed within a period of 330 days. The process begins with the admission of the application by the National Company Law Tribunal (NCLT), which is followed by the declaration of moratorium, appointment of an interim resolution professional, and the formation of the Committee of Creditors (CoC). The resolution professional is responsible for managing the debtor's business as a going concern and invites bids from prospective resolution plans. The CoC receives these bids, votes on them, and chooses the best offer to maximize creditor value. All parties involved are bound by the resolution plan if it is approved; if not, the business is liquidated. In the event of liquidation, the waterfall mechanism provided in Section 53 governs the allocation of assets. This mechanism gives priority to secured creditors and bankruptcy resolution fees, giving financial creditors some protection. The role of RBI is critical to the formulation of a framework for creditor protection, especially with regard to financial creditors such as banks and financial institutions. As the apex bank, RBI oversees lending, asset classification, and provisioning, which have a direct impact on the risk of insolvency faced by financial creditors. RBI, through various circulars such as the Prudential Framework for Resolution of Stressed Assets (2019), mandates financial institutions to take

[4] *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 S.C.C. 531 (India).

early measures to address financial distress, thus providing a framework to address insolvency risk proactively rather than reactively. RBI further directs banks to initiate insolvency proceedings against companies where there is substantial default, thus providing a framework of banking regulation that is aligned with IBC objectives. RBI thus ensures that financial institutions remain disciplined in their credit risk management.

Despite its positive attributes, it is observed that there are certain limitations in the Insolvency and Bankruptcy Code framework in providing protection to creditors in general and in the context of pre-insolvency financial risk in particular. Firstly, it is observed that the framework is more reactive in nature and activates only in case of defaults. Therefore, in such a scenario, creditors continue to be vulnerable to a decline in asset values in the pre-insolvency period. Moreover, high creditor "haircuts" in various high-profile cases suggest that recovery rates may be suboptimal in general and require improvement in this regard. Secondly, it is observed that operational creditors have less say in the decision-making process in general and in the Committee of Creditors in particular, which often leads to a biased outcome in such cases. Moreover, although the doctrine of commercial wisdom may be beneficial in ensuring greater efficiency in decision-making in general, it may be detrimental from a transparency and accountability standpoint in general due to limitations in judicial review in such cases.

Therefore, it may be noted that although the current framework in India in the context of insolvency and creditor protection under the IBC framework represents a significant step in addressing the shortcomings in the previous framework and providing greater protection to creditors in general and financial creditors in particular, it is observed that limitations in this regard suggest that reforms and greater integration with other legal frameworks in this regard may be required to be made in order to provide a more comprehensive framework in this regard.

3. Credit Insurance as a Risk-Mitigation Mechanism for Private Creditors

Credit insurance is an important mechanism for the transfer of financial risk in the context of the contemporary banking and insurance infrastructure, especially in the context of increasing credit risk and default risk faced by the borrowers. In a broader context, the concept of credit insurance is defined as an insurance product that protects lenders or suppliers from financial loss in the event of a borrower's or buyer's inability to fulfill their financial obligation due to insolvency, prolonged default, or any other contingencies. The Insurance Regulatory and Development Authority of India (IRDAI), the apex insurance regulator established under the

Insurance Regulatory and Development Authority Act of 1999, regulates the insurance products in the country with the aim of maintaining stability and transparency in the financial system of the country. In the context of the Indian legal system, the concept of credit insurance is largely represented in the form of trade credit insurance, which protects the risk of non-payment in the context of business transactions undertaken by the business and financial organizations. The legal foundation of the concept of credit insurance is based on the Insurance Act of 1938, which regulates the conduct, licensing, and solvency of the insurance organizations in the country. The IRDAI's Trade Credit Insurance Guidelines issued in 2021 under Section 14 of the IRDAI Act of 1999 have largely governed the regulation of credit insurance. The objective is to foster a sustainable and healthy growth of the credit insurance market while providing insurers with the freedom to develop products that meet the requirements of banks, NBFCs, and financial institutions. What is noteworthy is that the guidelines have included coverage for commercial risks such as insolvency or long delays in payment as well as political risks in international business deals such as war or interference by governments. From the perspective of banking law, credit insurance is seen as an instrument for transferring risks in conjunction with existing tools for managing credit risks such as collateral, guarantees, and sound credit policies. Credit insurance allows banks and financial institutions to mitigate borrower defaults and thus build up their capital adequacy ratios and increase their ability to lend. This is especially important in commercial lending because large amounts are often at stake. Credit insurance is also used in trade finance, bill discounting, and factoring to ensure payment for buyers' defaults.

Credit insurance has a pivotal function to play in facilitating credit availability as well as financial stability. This is particularly so as credit insurance helps mitigate default risks, which in turn allows lenders to provide credit to risky groups such as micro, small, and medium enterprises, thus facilitating growth as well as expansion of markets. Moreover, credit insurance also has a positive impact on liquidity in the banking sector as receivables can be more easily securitized or funded. However, a look at the regulatory evolution of credit insurance in India also points to certain limitations. For instance, earlier regulations framed by the Insurance Regulatory and Development Authority of India (IRDAI) placed certain restrictions on banks as well as lenders regarding the issuance of trade credit insurance directly to them. This has resulted in credit insurance being available only to suppliers. However, certain reforms have been introduced to this end, which point to a recognition of the importance of such financial instruments to banks as well as financial institutions as a whole. Credit

insurance is an important area of intersection between banking law as well as insurance law, which acts as a sophisticated tool of risk mitigation as well as risk transfer. A robust regulatory framework under IRDAI, along with banking practices, is essential to unlock the potential of credit insurance as a part of India's insolvency as well as creditor protection regime.

4. Interrelationship between Banking Regulation and Insurance Law in the Modern Financial System

The banking regulations-insurance law interface in the current financial system represents a key axis of creditor protection, particularly with regard to the Indian insolvency landscape. This interface is primarily subject to two different regulatory paradigms, namely, the Reserve Bank of India (RBI) for the supervision of banking institutions under the Banking Regulation Act, 1949, and the Insurance Regulatory and Development Authority of India (IRDAI) for the regulation of insurance products. In the early stages of regulation, RBI regulations on banking institutions focus on prudential regulations, risk management, and asset quality, while insurance law focuses on policyholder protection, solvency, and claims. However, the interface of these regulatory paradigms has the potential to improve creditor protection. While IRDAI regulations for insurance businesses concentrate on preserving solvency ratios and meeting contractual obligations, RBI lays significant emphasis on the mitigation of credit risk for the banking industry through provisioning, capital adequacy ratios, and exposure norms. The Insolvency and Bankruptcy Code, 2016, attempts to integrate these two codes by providing a comprehensive framework for the resolution of distressed assets in a manner that maximizes value for creditors.

A significant convergence is seen in the concept of bancassurance, in which insurance products are distributed through banking networks to borrowers in the form of credit insurance. The scholarly literature suggests that even though RBI and IRDAI are concerned with "parallel domains," there is a lack of coordination in supervision that leads to blind spots in the system, especially in cases of mis-selling and disclosure.[5] This fragmentation has an adverse impact on creditor protection because the effectiveness of the insurance contracts for mitigating default risks may not materialize due to the presence of ambiguity and/or overlap in the regulatory environment. Judicial decisions also reveal the same. For instance, in cases such as Anju Kalsi

[5] https://ijmsrt.com/articles/view/bancassurance-in-india-the-case-for-stronger-rbi-irdai-collaboration?utm_source

v. HDFC Ergo General Insurance Co. Ltd.[6] and Madhumita Biswas v. HDFC Standard Life Insurance Company Ltd.[7], the courts have been required to address issues pertaining to the liabilities of the insurer[8] and the bank with reference to bundled financial products. From the decisions rendered by the courts, it is evident that the presence of ambiguity in the regulatory environment with reference to the Reserve Bank of India and the Insurance Regulatory and Development Authority of India[9] creates confusion with reference to the liabilities of the institutions. The role and importance of insurance in the process of insolvency under the Insolvency and Bankruptcy Code (IBC) have remained underdeveloped. Even though the Code has consolidated creditor rights and provided greater importance to financial creditors, it has not specifically included insurance claims in its provisions. Therefore, a creditor relying on credit insurance may face a delay in claim realization in case a company becomes insolvent. This also proves that there is a need to have a harmonized legal framework that interlinks insurance claims and insolvency recovery mechanisms.

Further, developments in regulation show a trend towards gradual convergence. For instance, the Insurance Regulatory and Development Authority of India's (IRDAI) 'regulatory sandbox' framework enables innovation, including cross-sectoral financial products, while facilitating inter-regulatory cooperation through a controlled environment.[10] [11] At the same time, present-day policy debates reflect a greater need to monitor bancassurance activities, including consumer protection issues such as transparency and accountability, especially with regard to bundling products.[12] [13] Furthermore, IRDAI's governance framework is intended to strengthen

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[6] Anju Kalsi v. HDFC Ergo Gen. Ins. Co. Ltd. (2022) 1205 PLR 709 (SC) / Civil Appeal Nos. 1544-1545 of 2022 (Arising out of SLP (C) Nos. 32397-32398 of 2017)

[7] *The Sr. Vice President (Operation, HDFC Standard Life Insurance Co. Ltd. v. Mrs. Madhumita Biswas*, First Appeal No. A/1366/2015 (SCDRC West Bengal), arising from Complaint Case No. CC/216/2015 [District Kolkata-II(Central)]

[8] *LIC of India v. Consumer Educ. & Research Ctr.*, (1995) 5 S.C.C. 482 (India) (discussing insurer liability and consumer protection principles).

[9] Insurance Regulatory and Development Authority Act, 1999 [No. 41 of 1999, 11–14 (India)].

[10] Insurance Regulatory & Development Authority of India (IRDAI), *Report of the Working Group on Regulatory Sandbox in Insurance* (2019).

[11] Insurance Regulatory & Development Authority of India (Regulatory Sandbox) Regulations, 2019, Gazette of India.

[12] Reserve Bank of India (RBI), *Guidelines on Corporate Agency Arrangements and Bancassurance* (latest circulars and master directions).

[13] Insurance Regulatory & Development Authority of India (IRDAI), *Guidelines on Point of Sales (PoS) Persons and Insurance Marketing Firms* (as amended).

compliance and address systemic risks within the insurance domain.[14] [15] [16]

Nevertheless, there exist considerable challenges, especially due to the dual regulatory framework, which creates coordination challenges, especially with regard to issues such as claim settlement during insolvency, cross-selling, and risk apportionment between banking and insurance institutions.[17] [18] [19] In particular, the lack of a common supervisory authority often leads to inconsistent enforcement, creating legal ambiguity.[20] Furthermore, policy issues such as those highlighted by IRDAI's concerns about potential risks to policyholders arising from proposals to merge insurance and non-insurance entities reflect the complexity of integrating these sectors while ensuring stability.[21] [22] [23]

Even though the interrelationship between banking regulation and insurance law gives rise to a comprehensive framework for risk mitigation, its potential in offering protection to creditors is limited by fragmentation and a lack of clear legal integration. However, in order for creditors to fully integrate insurance protection and insolvent recovery mechanisms, better coordination between financial regulations and legal clarity are required in order to have a harmonized system that may be achieved by developing joint guidelines or amendments to laws.

5. Challenges and Regulatory Gaps

The interface between banking and insurance regulation in the insolvency regime in India is marked by a number of structural and regulatory gaps in the effective protection of creditor interests. Although the Insolvency and Bankruptcy Code, 2016 (IBC), has provided greater protection to creditor interests through the time-bound mechanism of insolvency and bankruptcy resolution, it is wanting in integrating insurance-based risk mitigation tools, thereby creating a number of doctrinal and practical challenges. The most important of these is

[14] Insurance Regulatory & Development Authority of India (IRDAI), *Annual Report 2022–23*.
[15] Insurance Regulatory & Development Authority of India (IRDAI), *Guidelines on Corporate Governance for Insurers in India* (2016, as amended).
[16] Insurance Regulatory & Development Authority of India (IRDAI), *Enforcement Policy* (2022).
[17] Reserve Bank of India, *Report on Trend and Progress of Banking in India 2022–23*.
[18] Insolvency and Bankruptcy Code, No. 31 of 2016, 14 (India).
[19] Umakanth Varottil, *The Evolution of Corporate Insolvency Law in India*, 10 Nat'l L. Sch. India Rev. 1 (2018).
[20] Tarun Khanna & Krishna Palepu, *The Evolution of Concentrated Ownership in India: Broad Patterns and a History of the Indian Software Industry*, in *A History of Corporate Governance around the World* (Randall K. Morck ed., 2005).
[21] Insurance Regulatory & Development Authority of India (IRDAI), *Discussion Paper on Risk-Based Capital Framework for Insurers in India* (2022).
[22] Insurance Regulatory & Development Authority of India Act, No. 41 of 1999, 14.
[23] Reserve Bank of India Act, 1934, 45.

the non-recognition of creditor insurance in the IBC. The Code is largely focused on debt recovery and resolution through institutional mechanisms like the Committee of Creditors (CoC), without any express recognition of insurance-based claims and credit risk transfer mechanisms. This has created a degree of confusion in situations where lenders rely on insurance products like surety bonds and credit insurance. In the context of surety insurance bonds, the relevance of the classification of the insurer as a "financial creditor" has been highlighted in the relevant academic literature, with the instrument being classified as a contract of guarantee under the Indian Contract Act, 1872, and thereby limiting the scope of recognition in insolvency.

Secondly, the usage of credit insurance by private lenders is still in the nascent stages, especially in the Indian banking and NBFC sector. Unlike their counterparts in the developed world, Indian lenders still prefer to rely on the collateral-based lending system rather than the risk transfer mechanism. This may be attributed to the fact that the Indian regulatory regime is still ambiguous and lacks a clear insolvency-linked mechanism to enforce the claims of the lenders. Thus, the overall usage of insurance as a risk-reduction tool is low, and the overall robustness of lenders is impacted in a negative manner. Another major factor is the legal ambiguity in the claims of the lenders in the case of insolvency. The overall question of priority and subrogation of the insurance claims in the case of insolvency is a major area of concern. The subrogation doctrine, as established in the case of Lalit Kumar Jain v. IBBI, is a fundamental concept that provides the right to the insurer/guarantor to take the position of the creditor and settle the debt. However, the overall precedence of the decision of the Supreme Court in the case of the Committee of Creditors (CoC) and the overall resolution plan is a major factor of concern. The overall precedence of the decision of the Supreme Court in the case of the Committee of Creditors (CoC) and the overall resolution plan is a major factor of concern.

The challenges of regulatory coordination among financial sector regulators such as the Reserve Bank of India (RBI) and the Insurance Regulatory and Development Authority of India (IRDAI) are also an area of difficulty. The RBI's broad mandate involves banking stability and prudential requirements. IRDAI's mandate involves the regulation of insurance products and solvency requirements. Of interest is the absence of an overarching regulatory framework that deals with the interface of credit insurance and insolvency. This has led to inconsistencies, as witnessed in the case of ***Apeejay Trust v. Aviva Life Insurance Co***.[24], where issues arose as to

[24] https://ibbi.gov.in/uploads/order/885b648aa53e06bc8061a68846666f9c.pdf

the applicability of the IBC to insurance companies and the exclusion of such companies as financial service providers.[25]

Such gaps imply a series of meaningful implications for financial stability and creditor confidence. For example, the absence of clarity may discourage lenders from engaging with more innovative forms of risk mitigation, which in turn increases systemic risks of default. Furthermore, inconsistent approaches to handling insurance claims may also imply a lack of predictability in the success of recoveries, affecting investor confidence in the insolvency regime. Other regulatory and judicial issues, for example, inadequate oversight of the resolution regime, also pose a series of challenges. It is apparent that, though the Insolvency and Bankruptcy Code (IBC) has revolutionized the insolvency regime in India, the absence of clear integration of insurance mechanisms, as well as other regulatory fragmentation and legal ambiguity, pose a series of challenges.

6. Comparative Perspectives and Emerging Practices

An analysis of the global landscape for insolvency laws across jurisdictions indicates that a number of jurisdictions have strengthened their financial and insolvency architecture by embracing insurance-based tools for mitigating financial risks. This is an important aspect that may be relevant for consideration in the context of India. Credit insurance is a crucial component of the financial market system in the European Union and is governed by unified legislation such as the Solvency II Directive. Studies have indicated that credit insurance is an effective means for mitigating credit risk for financial institutions. Moreover, the recent amendments to the Solvency II regime have strengthened the financial stability of insurance companies and have prioritized the interests of policyholders in the event of an insolvency proceeding. This means that financial institutions that have issued credit insurance policies have a higher probability of recovery in an insolvency proceeding compared to unsecured creditors. Studies have indicated that in the case of an insolvency proceeding after 2004, the recovery rate is close to 100%. Moreover, the EU insolvency regime follows a coordinated approach through measures like the Bank Recovery and Resolution Directive (BRRD), which includes risk-sharing mechanisms like bail-in and resolution planning. This is an indication of

[25] An Analysis of the Insolvency Framework for Insurance Companies in India [Indian Law Journal (ILJ)] https://indialawjournal.org/an-analysis-of-the-insolvency-framework-for-insurance-companies-in-india.php?

a systemic regime in which insurance, banking regulation, and insolvency law function harmoniously.[26]

In the United Kingdom, the practice of credit insurance has been extensively adopted; however, its role in the context of insolvency has been largely governed by the terms and conditions of the contract and case law as opposed to its legislative recognition. For instance, cases such as Cornhill Insurance plc v. Improvement Services Ltd. have highlighted the issues arising out of the claims made under the policy in the context of insolvency. Another case, Re Charnley Davies Ltd. (No. 2), has highlighted the link between insurance-based companies and the administration of insolvency with special reference to the interests of the creditor and the realization of the assets. These cases collectively establish the role of insurance as ancillary; however, the absence of a special legislative framework has led to the application of the principles of insolvency law.

The United States has adopted a completely different approach with special reference to the Chapter 11 framework for corporate restructuring. This framework has been based more on restructuring than liquidation. Within the context of this framework, the concept of mitigating risks has been addressed by an amalgamation of credit-based instruments and insurance contracts. For instance, the financial crises of 2008 witnessed the application of the Troubled Asset Relief Program and the application of deposit insurance for the stabilization of financial institutions.[27] Unlike in the European Union, credit insurance is not specified in the framework of insolvency priorities but is used in conjunction with other financial measures. One of the most important emerging trends is the increased importance of the coordination of cross-border insolvency proceedings. The UNCITRAL Model Law, which is in force in the United Kingdom and the United States, enables the recognition of foreign proceedings and promotes cooperation. However, differences in national laws continue to create fragmentation in the assessment of creditor rights and insurance claims in different jurisdictions.

From a comparative perspective, the following main points can be drawn:

1. The role of institutional integration: The EU model shows that the integration of

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[26] Moss QC, Gabriel, Bob Wessels, and Matthias Haentjens, 'United Kingdom', in Gabriel Moss QC, Bob Wessels, and Matthias Haentjens (eds), *EU Banking and Insurance Insolvency* (New York, 2017; online edn, Oxford Academic), https://doi.org/10.1093/oso/9780198759393.003.0020, accessed 17 Mar. 2026.

[27] Krimminger, Michael, ' Resolution in the UK and US: Variations to the Same Goals', in Jens-Hinrich Binder, and Dalvinder Singh (eds), *Bank Resolution: The European Regime* (2016; online edn, Oxford Law Pro), https://doi.org/10.1093/law/9780198754411.003.0013, accessed 17 Mar. 2026.

banking regulation, insurance law, and insolvency law increases creditor protection.

2. The significance of priority: The granting of preferred status to insured creditors, as in the case of the Solvency II regime, significantly increases the level of recovery.

3. The importance of legal certainty: The greater the statutory clarity in the jurisdiction regarding the status of credit insurance, the easier market uptake is likely to be.

In the case of India, the above comparative practices show that a more explicit integration of credit insurance in the Insolvency and Bankruptcy Code, 2016, along with coordinated oversight from the RBI and the IRDAI, could help build stronger creditor protection in the country. The integration of aspects like policyholder priority, regulatory harmonization, and international insolvency cooperation could add strength to the regime in terms of both clarity and financial strength. While India's progress in insolvency reform is certainly noteworthy, the above comparative practices show that the integration of insurance-based risk mitigation tools in the insolvency regime could help build a stronger creditor protection regime in the country.

7. Conclusion and Recommendations

It is evident from the above analysis that the interrelationship between banking regulation, insurance law, and insolvency law in India is still in a nascent stage, especially with regard to credit insurance as a risk mitigation tool for private sector creditors. While the IBC, 2016, has significantly strengthened creditor rights in India with the introduction of a time-bound insolvency resolution process and the empowerment of financial creditors through the Committee of Creditors, there is a complete absence of the integration of insurance-based risk transfer tools. This creates a lacuna in the protection of creditor rights, especially in cases of insolvency where there are significant financial losses that could be mitigated with the help of insurance tools. Furthermore, the research reveals that there is a divided regulatory regime in India, with the RBI and the IRDAI playing important roles in the regulation of insurance law in India, especially with regard to credit insurance products, including those in the domain of bancassurance products, which creates ambiguity in terms of liability, claims, and consumer protection, as evident from the judgments in the cases of *Anju Kalsi v. HDFC Ergo General Insurance Co. Ltd.* and *Madhumita Biswas v. HDFC Standard Life Insurance*.

From a comparative perspective, countries like the United Kingdom and the United States have

managed to better assimilate credit insurance, as well as financial guarantees, into the insolvency regime, which in turn strengthens the creditor regime, thereby promoting financial stability. In the case of India, the limited assimilation of these financial instruments, especially in the case of private sector lenders, can be attributed to the uncertainty and reluctance of the market as well as the regulatory regime.

Recommendations

Firstly, in the context of the IBC, it is urgently necessary to give the idea of credit insurance legal recognition. The law must be amended to explicitly address matters pertaining to insurance claims, their priority, and their enforcement. This would make it possible for adjudicating authorities and resolution specialists to use insurance claims efficiently.

Secondly, there is a need to improve coordination between the Reserve Bank of India (RBI) and the Insurance Regulatory and Development Authority of India (IRDAI). It is essential that a framework is developed between the two parties that deals with issues related to credit insurance products. Additionally, the scope of the regulatory sandbox concept must be increased so that financial products of a hybrid nature are permitted to be developed. Secondly, the Reserve Bank of India (RBI) and the Insurance Regulatory and Development Authority of India (IRDAI) need to work together more effectively. To handle matters pertaining to credit insurance products, like disclosure, responsibility, and grievance redressal, a framework between these two institutions must be established. The "regulatory sandbox" idea needs to be broadened in order to test hybrid financial products while protecting consumers.

Thirdly, there is a necessity to standardize bancassurance products in order to eliminate ambiguity with regards to contractual agreements. The formulation of guidelines that specify the boundaries of authority between banking institutions and insurance companies is necessary, especially in cases of mis-selling or lack of disclosure. Improving consumer protection policies would also strengthen the level of trust.

Fourthly, there is a necessity to encourage more financial institutions, especially non-banking institutions, to offer credit insurance products. This can be achieved through the formulation of incentives that promote the awareness of the importance of credit insurance.

Lastly, there is a need to inculcate greater clarity in the judiciary, especially through capacity-

building programs targeting key authorities such as the Insolvency and Bankruptcy Board of India (IBBI) and the National Company Law Tribunal (NCLT). This will result in greater clarity in scenarios involving conflict in insurance claims. In the long run, the development of a body of case law will result in greater trust. The inclusion of insurance mechanisms in India's insolvency system has tremendous potential for strengthening creditor protection, ensuring greater stability, and aligning itself with international best practices. This can be achieved through a holistic strategy involving legislative and regulatory interventions.

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